

## **TITLE 4. DEPARTMENT OF TRANSPORTATION**

### **Notice of Proposed Rulemaking Outdoor Advertising Regulations**

#### **TO ALL INTERESTED PERSONS:**

The California Department of Transportation ("Department") proposes to adopt the proposed regulations after considering all comments, objections and recommendations regarding the proposed action. Following the public hearing and comment period, the proposal may be adopted substantially as set forth without further notice.

#### **PUBLIC HEARING**

The Department will hold a public hearing starting at 10:00 a.m. on December 1, 2003, at 1120 N Street, Room 1450, Sacramento, California. The building is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

#### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on December 1, 2003. The Department will consider only comments received at the Department by that time. Submit comments to:

Joel Ibarra  
Office of Outdoor Advertising  
California Department of Transportation  
1120 N Street, MS-36  
Sacramento, CA 95814

#### **AUTHORITY AND REFERENCE**

Business and Professions Code sections 5250 and 5415 authorize the Department to adopt the proposed regulatory actions which would implement, interpret or make specific sections 5205, 5216 5223, 5225, 5251, 5272, 5273, 5273.5, 5301, 5302, 5354, 5358, 5360, 5400, 5405, 5408, 5440, 5463, 5482, 5484 and 5485 of the Business and Professions Code.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

The Department proposes to adopt section 2444 in Title 4 of the California Code of Regulations and to amend sections 2241, 2242, 2243, 2244, 2245, 2250, 2270, 2271, 2272, 2300, 2401, 2422, 2423, 2424, 2425, 2426, 2441, 2442, 2443, 2505, 2507, 2508, 2511 and 2512 in Title 4 of the California Code of Regulations.

Business and Professions Code sections 5250 and 5415 authorize and require the Department to promulgate regulations to enforce the Outdoor Advertising Act (Business and Professions Code sections 5200 et seq.) consistent with national standards. The Outdoor Advertising Act and national standards provide specific requirements and restrictions concerning the specifications of outdoor advertising displays and the conduct of outdoor advertising activities, including licensing and permitting requirements. Moreover, there is statutory authority that concerns violation and enforcement provisions related to displays, permits and licenses. The existing regulations were enacted in 1978 and later amended in 1999 to implement State statutory and Federal statutory and regulatory authority.

The proposed regulatory action will implement the Outdoor Advertising Act and national requirements concerning the placement of outdoor advertising, conduct of outdoor advertising activities, administration of permit and licensing requirements, violations and the enforcement process. Moreover, this regulatory action updates language and terminology used by the Department and the industry.

Section 2241 adds a formal administrative review process to Department's permitting, licensing, and enforcement decisions, reducing litigation expenses, insuring more consistent decisions, and expediting decision making.

Section 2242 (h) reflects change in Department terminology with no substantive change.

Section 2243 provides a technical change deleting references to Code sections not dealing with on-premise displays.

Section 2244 clarifies that Redevelopment Agency must confirm project boundaries and qualifying businesses for "Redevelopment Displays". This will result in considerable savings of time to make these determinations and insure no confusion between the local Redevelopment Agency and the Department.

Section 2245 provides a technical change with clarifying language on penalties for "Redevelopment Displays" not obtaining extensions after initial 10 year period.

Section 2250 provides a technical change relating to change of Department's name in 1973.

Section 2270 clarifies status of "tri-vision signs" as a changeable message sign; this will end years of changing and inconsistent enforcement.

Section 2271 clarifies that standards for destroyed or damaged displays apply to all Displays and that the appeal provisions of section 2241 apply to such determinations.

Section 2272 clarifies that standards for abandoned displays apply to all Displays and that the appeal provisions of section 2241 apply to such determinations.

Section 2300 reflects changes in the Code of Federal Regulations and will incorporate the Code of Federal Regulations by reference.

Section 2401 adds requirement that an activity that does not have necessary state or local business licenses or permits will not qualify as a commercial or industrial activity for the purposes of the Act, making such determinations easier and more consistent.

Section 2422 changes implementing new requirement that local agencies must approve outdoor advertising permits as required by 2002 legislation (SB 1480), now found at Section 5354 of the Business and Professions Code.

Section 2424 changes implementing 2002 legislation (SB 1480) allowing permit fees to be increased to reflect Department's actual expense, but to \$100 per permit and specifying appeal rights under amended section 2241 for determinations revoking permits for non-compliance with this section.

Section 2425 adds right to appeal under amended section 2241 for parties disputing the Department's determination regarding permit transfers. Currently, the only remedy in such disputes is legal action.

Section 2426 modifies retention period of revocation notices from five years to one year to ease retention burdens.

Section 2427 establishes parameters for cities seeking relocation permits.

Section 2441 modifies to add new penalty requirements enacted in 2002 legislation (SB 1480, now found at Business and Profession Code section 5485); adds right to appeal violation notices under section 2241 and clarifies appropriate party to serve notices of violations.

Section 2442 specifies aspects of violation notices that are subject to appeal under amended section 2241 to standardize appeal procedures.

Section 2443 adds references consistent with 2002 legislation (SB 1480, now found at Business and Professions Code section 5354) regarding revocation of outdoor advertising permits and adds appeal rights under amended section 2241 for action under this section.

Section 2444 is a new section specifying causes for revocation of an outdoor advertising license. While the Code has provided the Department could revoke a license since the 1930's, no regulatory standards have ever been adopted. This will correct that oversight.

Section 2505 contains technical amendments to add current Departmental terminology, clarifies the time to commence plantings on a new segment to conform with current Department practice and allows notices to be placed on Landscape Architect's web page rather than only written copies. This brings this 1978 regulation into conformance with current Department practices.

Section 2507 contains amendments regarding median planting to implement 2002 legislation (SB 1480, now found at Business and Professions Code section 5216). The reference to Glen Anderson Freeway is deleted to conform to Court decision.

Section 2508 contains amendments regarding median planting to implement 2002 legislation (SB 1480; now found at Business and Professions Code section 5216).

Section 2511 provides amendments to clarify the term "two years" as to referring to two "fiscal" years to conform to Department practice and adds provisions regarding "catastrophic event" to reflect current diseases and blights which may result in widespread plant deaths that will overwhelm the capacity of the Department to replace in a normal time frame.

Section 2512 provides an amendment to clarify that the existing appeal process regarding determinations are now subject to new appeal provisions of amended section 2241.

Section 2513 provides a non-substantive change to correct a reference.

In conclusion, this regulatory action proposes to amend and adopt regulations in Title 4, Division 6 of the California Code of Regulations for consistency and to effectively serve the Department and the public.

## **DISCLOSURES REGARDING THE PROPOSED ACTION**

*The Department has made the following initial determinations:*

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The Department is not aware of any cost impacts that at representative private person or business would necessarily incur in reasonable compliance with the proposed regulatory action.

Adoption of this regulatory action will not:

- (1) create or eliminate jobs within the state of California;
- (2) create new businesses or eliminate existing businesses within the state of California;
- or
- (3) affect the expansion of businesses currently doing business within the state of California.

Significant effect on housing costs: None.

***Small Business Determination***

The Department has determined that the proposed regulatory action may affect small businesses.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to presents statements or arguments with respect to alternatives to the proposed regulatory action at the scheduled hearing or during the written comment period.

## **CONTACT PERSONS**

Inquiries concerning the proposed regulatory action may be directed to:

Joel Ibarra  
Office of Outdoor Advertising  
California Department of Transportation  
1120 N Street, MS-36  
Sacramento, CA 95814  
Telephone: (916) 653-3042; CALNET 453-3042

James Arbis  
Office of Outdoor Advertising  
California Department of Transportation  
1120 N Street, MS-36  
Sacramento, CA 95814  
Telephone: (916) 654-6413; CALNET 464-6413

Questions on the substance of the proposed regulatory action may be directed to Mr. Ibarra.

Please direct requests for copies of the proposed text (the "express terms") of the regulatory action, the initial statement of reasons, the modified text of the regulatory action, if any, or other information upon which the rulemaking is based to Mr. Ibarra at the above address.

## **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address during regular business hours. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the initial statement of reasons. Copies may be obtained by contacting Joel Ibarra at the address or phone number listed above.

## **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After holding the public hearing and considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described

in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to Joel Ibarra at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Mr. Ibarra at the above address.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of the regulations in underline and strikeout can be accessed through the Department's website at:

[www.dot.ca.gov/oda](http://www.dot.ca.gov/oda)